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Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SHERRIE ATTEBERRY, an individual,  
Plaintiff,

vs.

SMITH'S FOOD AND DRUG CENTERS,  
INC., d/b/a SMITH'S FOOD AND DRUG  
CENTER; TYLER TATE, an individual; DOE  
INDIVIDUALS I through XX; ROE LEGAL  
ENTITIES I through XX, inclusive,  
Defendants.

Case No. 2:21-cv-01984-CDS-EJY

**STIPULATION AND ORDER TO  
EXTEND THE REBUTTAL EXPERT  
DISCLOSURE DEADLINE**

**(SECOND REQUEST)**

The deadline for rebuttal-experts is June 29, 2022. Pursuant to LR II 26-4, a request made within 21 days of the expiration of a deadline that the parties seek to extend must also be supported by a showing of good cause. *See* LR 26-3. To establish good cause, the Court looks to the diligence of the party that seeks the extension. *Safeco Ins. Co. of Am. v. Air Vent, Inc.*, Case No. 2:20-01579, 2021 U.S. Dist. LEXIS 95692, \*1 (May 19, 2021) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294-95 (9th Cir. 2000)). Good cause is present if the deadline at issue "cannot reasonably be met despite the diligence of the party seeking the extension." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608-09 (9th Cir. 1992).

Here, on June 18, 2022, defense counsel received a telephone call from his retained rebuttal expert, Dr. Vladimir Sinkov, that he could not complete his rebuttal report in time for the rebuttal

expert disclosure deadline. On June 1, 2022, Plaintiff served Defendant with the expert designation of David Fish, M.D. According to Dr. Fish, Plaintiff's complaints and treatment are related to the accident based on the fact that she had not required any medical treatment to her neck in the 11 years preceding the accident. Further, Dr. Fish opines that Plaintiff may require future treatment for her cervical spine and included in his report a Life Care Plan. According to the Life Care Plan, Plaintiff will need \$782,450 in future treatment to her cervical spine which is 10 times the amount of Plaintiff's past medical expenses.

In addition, there are additional medical providers that defense counsel identified and requested authorizations from plaintiff's counsel to request the medical records. Plaintiff's counsel has informed defense counsel that he will add the providers to the authorization. Finally, the medical records state that Plaintiff received an epidural injection approximately 11 years before the accident. However, the name of the provider that administered the injection was not disclosed.

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff SHERRY ATTEBERRY, by and through her attorney of record, Burke L. Huber, Esq. of the VAN LAW FIRM, and Defendant SMITH'S FOOD & DRUG CENTERS, INC., by and through its attorney of record, Gregory A. Kraemer, Esq. of the law firm COOPER LEVENSON, P.A., that the rebuttal expert disclosure deadline and all other deadlines be extended for a period of 30 days.

**STATEMENT SPECIFYING THE DISCOVERY THAT HAS BEEN COMPLETED.**

1. Plaintiff's Initial Disclosures were served on December 23, 2021.
2. Defendant's Initial Disclosure Statement was served on February 10, 2022.
3. Plaintiff served Interrogatories, Requests for Production and Request for Admissions to Defendant.
4. Defendant served Interrogatories, Request for Production and Request for Admission to Plaintiff.
5. Plaintiff served her responses to Defendant's Interrogatories, Request for Production and Request for Admission.
6. Plaintiff served her Initial Expert Disclosure on May 31, 2022.
7. The deposition of Plaintiff was conducted on June 15, 2022.

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2       **A.   SPECIFIC DESCRIPTION OF THE DISCOVERY THAT**  
3       **REMAINS TO BE COMPLETED.**

- 4           1. Collect Plaintiff's medical records from additional providers identified in her medical  
5           records.  
6           2. Defendant to disclose Dr. Vladimir Sinkov as a rebuttal expert.  
7           3. Plaintiff to take the deposition of SMITH'S Rule 30(b)(6) witness.  
8           4. The depositions of the medical expert witnesses.

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10       **B.   REASONS WHY THE DISCOVERY REMAINING WAS NOT**  
11       **COMPLETED WITHIN THE DEADLINES CONTAINED IN THE**  
12       **DISCOVERY SCHEDULING ORDER**

13           The need for Defendant to retain a medical expert in this case did not arise until Plaintiff's  
14           Initial Expert Disclosure served on June 1, 2022. Specifically, the Life Care Plan, which was  
15           included in Dr. Fish's report, calls for significant damages that require a medical expert to review.  
16           Defendant retained Dr. Sinkov to provide a report; however, on June 18, 2022, Dr. Sinkov's office  
17           informed defense counsel that he needed additional time to review the medical records, needed time  
18           to review records that have been disclosed, and thus could not provide his report in time for the June  
19           29, 2022 rebuttal expert disclosure deadline.

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C. **PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY**

Pursuant to Local Rule 26-4(d), the parties propose the following new discovery deadlines:

<b><u>Event</u></b>	<b><u>Current Deadline</u></b>	<b><u>Proposed Deadline</u></b>
Disclosure of Experts	05/31/2022	N/A
Disclosure Of Rebuttal Experts	06/29/2022	07/29/2022
Close Of Discovery	08/01/2022	09/01/2022
Dispositive Motions	08/29/2022	9/29/2022
Pre-Trial Order	09/29/2022	10/28/2022

RESPECTFULLY SUBMITTED this 22nd day of June, 2022.

**VAN LAW FIRM**

**COOPER LEVENSON, P.A.**

/s/ Burke L. Huber  
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/s/ Gregory A. Kraemer  
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*Attorneys for Defendant*  
*Smith's Food & Drug Centers, Inc.*

**IT IS SO ORDERED.**

DATED this 22nd day of June, 2022.

  
UNITED STATES MAGISTRATE JUDGE